



13 AUG 2010

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In re Application of
CHOI
Serial No.: 10/575,593
PCT App. No.: PCT/KR04/01191
Int'l Filing Date: 19 May 2004
Priority Date: 11 October 2003
Attorney Docket No.: 1365-4PCT US
For: VACUUM FIXER

DECISION ON
PETITION UNDER
37 CFR 1.181

This is a decision on applicant's "Petition to Withdraw the Holding of Abandonment Based on Failure to Receive Office Action Under 37 CFR 1.181(a)", filed on 30 December 2009 in the US Patent and Trademark Office. No petition fee is required.

BACKGROUND

On 11 April 2006, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*, the basic national fee.

On 30 October 2006, the Office mailed a Notification of Acceptance under 35 U.S.C. 371 (Form PCT/DO/EO/903).

On 05 February 2009, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicant indicating that an oath or declaration, in compliance with 37 CFR 1.497(a) and (b), was required.

On 23 November 2009, the Office mailed a Notification of Abandonment (Form PCT/DO/EO/909) indicating, that the application went abandoned for failure to respond to the Notification of Missing Requirements mailed 05 February 2009.

On 30 December 2009, applicant filed the present petition requesting that the Office withdraw the holding of abandonment because applicant did not receive the Notification of Missing Requirements.

DISCUSSION

In order to establish that papers were not received, a petition under 37 CFR 1.181 with a proper showing is required. No petition fee is required.

As set forth in MPEP Section 711.03(c):

[T]he Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office

communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

The Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required. A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

Practitioner makes the statement that the Office action was not received by the practitioner and describes the system used for recording an Office action received at the correspondence address of record with the USPTO.

In addition, a copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required and was provided. Applicant submitted a copy of the file jacket, which did not indicate that the Notification was not entered into this record. The Master Docket for the period 1/29/2009-2/12/2009 was submitted. However, this is not the period at issue. The master docket record showing all due date entries for the response due date of 05 April 2009 is required to show that applicant did not receive a copy of the Notification of Missing Requirements as set forth in MPEP 711.03(c)IA. Thus, applicant has not yet provided the proper showing necessary to withdraw the holding of abandonment as explained above.

An executed declaration was submitted on 30 December 2009. Therefore, the 30 October 2006 Notification of Acceptance under 35 U.S.C. 371 (Form PCT/DO/EO/903) indicating a 35 U.S.C. 371(c)(1), (c)(2) and (c)(4) date of 15 September 2006 is incorrect and is hereby **VACATED**.

CONCLUSION

For the reasons above, Applicant's petition under 37 CFR 1.181 to request to withdraw holding of abandonment is **DISMISSED WITHOUT PREJUDICE**.

The 30 October 2006 Notification of Acceptance under 35 U.S.C. 371 (Form PCT/DO/EO/903) is hereby **VACATED**.

The application remains **ABANDONED**.

Any reconsideration on the merits of this petition must be filed within TWO (2) MONTHS from the mail date of this decision.

Any further correspondence with respect to this matter may be filed electronically via EFS-Web selecting the document description "Petition for review and processing by the PCT Legal Office" or by mail addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

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